UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
2667	

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>03</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>29 December 2003</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-45</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) <u>9-13,23-27,33,37-39 and 43-45</u> is/are allowed.

6)☒ Claim(s) <u>1-8,14-22,28-32,34-36 and 40-42</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8, 14-19, 28-32, 34-36 and 40-42 are rejected under 35 U.S.C. 103(a)

as being unpatentable over de la Salle (US Patent No. 6144961) in view of (Dobbins US

Patent No. 5485455).

Regarding claims: 1, 14-19, 28, 29 and 34-36 are, de la Salle teaches: a network

with a server 32 (Figure 1) and a probing method used to probe data packets for a set

amount of time (Col 4, lines 23-39), with an ongoing communication taking place and

the time allotted to measure traffic as a part of an larger ongoing exchange of data

(Col 4, lines 40-49), in a non-intrusive manner (Col 4, lines 61-64) a network interface

device and a connection to a destination device originating from a source device where

the devices mentioned are a client computer and a server respectively (Col 9, lines

40-55), a separate intranet for the server communicating to clients external to that

intranet (Figure 1), but fails to teach of any plurality of metrics being measured by the

server and a processor coupled to the network interface. Dobbins teaches: a network

with a processor coupled to a network interface (Figure 5) and metrics measured and

calculated throughout the system to establish traffic routing assistance providing a

better efficiency (Col 4, lines 20-40). Therefore it would have been obvious to one of

ordinary skill in the art at the time the invention was made to have combined a

processor and metrics calculations with a server and client type network using

non-intrusive techniques to further, increase efficiency.

Regarding claim 2, de la Salle teaches: a first packet being transmitted between

two nodes as a data segment is detected between the two nodes and an end to the

data stream is detected by a lack of packets or after a last packet (Col 18, lines 14-28).

Regarding claim 3, de la Salle teaches: an IBM compatible computer and or

various sub-networks as types of networks valid for the configuration described herein;

however, de la Salle fails to teach IP addresses assigned to the server and client as

references for the source and destination addresses used to identify the respective

nodes on the network, examiner takes official notice that an IP address is well known as

a means to identify a node on a network especially within IBM compatible computers

and related sub-networks.

Regarding claims 4 and 5, de la Salle teaches: a server with active

communication to users outside the server's intranet (Figure 1).

Regarding claim 6, de la Salle teaches: a network interface device and a

connection to a destination device originating from a source device where the devices

mentioned are a client computer and a server respectively (Col 9, lines 40-55), but fails

to teach a header portion of the packet as the portion filtered, Dobbins teaches: a

network interface device with a header as the means for lookup with the MAC address

as a terminal means for header translation (Col 15, lines 33-37). Therefore it would

have been obvious to one of ordinary skill in the art at the time the invention was made

to have used the header as the only means of data captured as a provision for
necessary information as not to exceed beyond the required data in order to keep
efficiency at a maximum.

Regarding claims 7, 8, and 30, de la Salle teaches: a router routine for
calculating neighboring nodes by address and building this information by SNMP for
address resolution and hop count analysis (Col 12, lines 49-67 and a RIP table entry to
assist in calculating hop count (Col 13, lines 1-5), the process continues to account for
updating probe objects 52 in the database for routing information stemming from the
router configuration, such that fresh objects are modified and given a time trigger for
keeping accurate topology information (Col 13, lines 45-55).

Regarding claims 31, 32 and 40-42 de la Salle teaches: a probe computer that
probes the network (Figure 2) but fails to teach of intrusive or probing packets being
added to the regular flow of data in a respective network. Dobbins teaches: a probe
packet used on a connection establishment determination network arrangement.
Therefore it would have been obvious to one of ordinary skill in the art at the time the
invention was made to have combined the use of probe packets on a network as an
effective means to track packets on a network.

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over de
la Salle (US Patent No. 6144961) in view of (Dobbins US Patent No. 5485455) and
further in view of Bhaskaran (US Patent No.5963540).

Regarding claims 20-22 de la Salle teaches all a network with a server 32 (Figure
1) and a probing method used to probe data packets for a set amount of time (Col 4,

lines 23-39), with an ongoing communication taking place and the time allotted to

measure traffic as a part of an larger ongoing exchange of data (Col 4, lines 40-49), in a

non-intrusive manner (Col 4, lines 61-64) a network interface device and a connection

to a destination device originating from a source device where the devices mentioned

are a client computer and a server respectively (Col 9, lines 40-55), a separate intranet

for the server communicating to clients external to that intranet (Figure 1), but fails to

teach of a second network server used to communicate on a second network

connection while communicating the above parameters and signaling between the two

servers. Bhaskaran teaches: a conventional network with two servers (Figure 1) with

networked links between the two servers on an IP network (Col 1, lines 15-24).

Therefore it would have been obvious to one of ordinary skill in the art at the time the

invention was made to have combined the conventional network configuration of two

servers with the above embodiment in order to establish a conventional topological

configuration for providing added services to for flexible enhancement purposes.

Allowable Subject Matter

Claims 12, 13, 25, and 27 are allowed for reasons specified in paper no. 3.

Claims 37-39 are allowed for reason specified in paper no. 13.

The claims 9-11, 23, 24, 26, 33 and 43-45 are allowed for reasons specified in

the applicant's arguments paper no. 13 and office action paper no. 14.

Response to Arguments

Applicant's arguments filed 12/29/2003 have been fully considered but they are

not persuasive for all of the pending claims.

Regarding claims 1, 14, 17, 28 and 34, pages 24-26 of the remarks, Applicants argue that the reference "dose not describe or suggest an intranet" (p. 25, lines 15-16, p. 26, lines 4-6). Examiner respectfully disagrees. In view of the discussion and previous office actions particularly the references pointing to an "intranet", "LAN" and "WAN" and the definitions thereof, the examiner holds the rejections for these independent claims to stand as rejected for reasons stated in paper nos. 3 (first office action), 5 (final action) and 8 (advisory action). Furthermore, according to the official telecommunication dictionary, an intranet is defined "a private network that uses Internet software and Internet standards", and designed for use by everyone within the private network. The system disclosed by de la Salle includes both Internet software and Internet standards for adapting with Internet (ISO model-7 layers), such as servers, routers, bridges, LAN, Ethernet, and token ring protocols.

Regarding claim 8, pages 22-23 of the remarks, Applicants argue that the reference does not teach the limitation "an entry is deleted from memory when the at least one connection for the entry is inactive when predetermined measure time interval expires" as recited in claim 8. Examiner respectfully disagrees. De la Salle clearly discloses this feature at col. 13, lines 43-55. De la Salle teaches, "One of the operations, intended to keep the data current, is an update database routine 140. The update db routine 140 may be triggered manually, **be subject to a time trigger**, or may be a continual process, at the choice of the programmer and user. This process utilizes the sampling assembly 38 and the analysis assembly 40 to provide **fresh probe objects 52 for modifying existing db objects 106** and creating new db objects 106

when there are changes in the topology or contact of the network 12. Basically, the

update database routine 140 involves repetition of the build db routine 96 and

replacing older versions of db objects 106 with current versions." It indicates that

the database objects are updated in a predetermined time interval, and the older

versions of database objects are deleted and replaced with current versions every time

the database objects are updated.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Thai D Hoang whose telephone number is (703) 305-

3232. The examiner can normally be reached on Monday-Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Chi Pham can be reached on (703) 305-4378. The fax phone number for

the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Thai Hoang

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TECHNOLOGY CENTER 2600   4/13/0f